

KENJI M. PRICE #10523

United States Attorney

HARRY YEE #3790

Assistant U.S. Attorney

Room 6-100, PJKK Federal Bldg.

300 Ala Moana Boulevard

Honolulu, Hawaii 96850

Telephone: (808) 541-2850

Email: Harry.Yee@usdoj.gov

JEFFREY BOSSERT CLARK

Acting Assistant Attorney General

WILLIAM C. PEACHEY

Director

GLENN M. GIRDHARRY

Assistant Director

SAMUEL P. GO NYS BAR #4234852

Assistant Director

United States Department of Justice

Office of Immigration Litigation, District Court Section

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

Telephone: (202) 353-9923

E-mail: samuel.go@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

YA-WEN HSIAO,

Plaintiff,

v.

EUGENE SCALIA,

Secretary of Labor,

Defendant.

) Civil No. 1:18-cv-00502-JAO-KJM

)

) DEFENDANT'S SCHEDULING

) CONFERENCE STATEMENT;

) CERTIFICATE OF SERVICE

)

) DATE: November 9, 2020

) TIME: 9:30 a.m.

) JUDGE: Honorable Kenneth J.

) Mansfield

DEFENDANT’S SCHEDULING CONFERENCE STATEMENT

Defendant Eugene Scalia, Secretary of Labor, through undersigned counsel, submits his Rule 16 Scheduling Conference Statement in the above-referenced matter.

1. NATURE OF THE CASE

Plaintiff brings this civil action against Defendant under the Administrative Procedure Act (“APA”), 5 U.S.C. § 702 *et seq.*, and the Fifth Amendment of the Constitution, alleging, among other things, that (1) the United States Department of Labor’s (“DOL”) denial of a labor certification filed by the University of Hawaii’s John A. Burns School of Medicine “on behalf of Plaintiff,” and the Board of Alien Labor Certification’s (“BALCA”) affirmance of DOL’s denial is an abuse of discretion; (2) the En Banc procedures adopted by BALCA are arbitrary, capricious, and violate the APA; and that (3) BALCA’s adjudication violated Plaintiff’s Fifth Amendment due process rights.

2. STATEMENT OF JURISDICTION

Plaintiff invoked the jurisdiction of the district court under the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.*, and 28 U.S.C. § 1331. Plaintiff also invoked the District of Hawaii as the proper venue for this matter. Defendant does not dispute jurisdiction or venue at this time.

3. DEMAND FOR JURY TRIAL

No jury trial has been demanded in this case.

4. APPROPRIATENESS OF DISCLOSURES

As the district court dismissed this matter for lack of standing, and the Ninth Circuit Court of Appeals vacated the district court's dismissal and remanded the matter back to district court, Defendant has not yet answered Plaintiff's amended complaint, and Defendant's argument, as raised in his Motion to Dismiss, that Plaintiff's Fifth Amendment due process claim should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim has not yet been addressed.

Accordingly, Defendant respectfully requests that the court allow Defendant to respond to Plaintiff's amended complaint by November 23, 2020.

Defendant previously agreed with Plaintiff, as stated in Defendant's previous Rule 16 Statement filed on February 14, 2019, that as this matter is an action for review of the administrative record, initial disclosures pursuant to the Fed. R. Civ. P. 26 and LR26.1 are not required. Once Defendant answers the complaint, Defendant will obtain and serve the administrative record on Plaintiff in a timely manner, and does not oppose Plaintiff's request to have an opportunity to ask that the record be supplemented, if necessary, within 30 days of receiving the record.

5. DISCOVERY COMPLETED/IN PROGRESS; MOTIONS PENDING & DATES

Defendant previously agreed with Plaintiff, as stated in Defendant's previous Rule 16 Statement filed on February 14, 2019, that as an action for review of the administrative record, discovery is not appropriate for this case. Plaintiff's challenge to the legality of rules and procedures does not involve any discovery.

6. APPROPRIATENESS OF SPECIAL PROCEDURES

No special procedures appear necessary.

7. RELATED CASES

Defendant is not aware of any related cases.

8. ANY ADDITIONAL MATTERS

No additional matters need be raised at this time.

Dated: November 2, 2020

Respectfully submitted,

KENJI M. PRICE
United States Attorney
District of Hawaii

By: /s/ Harry Yee
HARRY YEE
Assistant U.S. Attorney

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

WILLIAM C. PEACHEY
Director

GLENN M. GIRDHARRY
Assistant Director

By: /s/ Samuel P. Go
SAMUEL P. GO
NYS Bar No. 4234852
Assistant Director
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-9923
E-mail: Samuel.go@usdoj.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on November 2, 2020 by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by First-Class Mail:

Ya-Wen Hsiao
1141 Hoolai St., Apt. 201
Honolulu, HI 96814

November 2, 2020

/s/ Samuel P. Go
Samuel P. Go
Assistant Director
District Court Section
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 353-9923
Fax: (202) 305-7000